



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

Don Young
Chairman

James L. Oberstar
Ranking Democratic Member

Lloyd A. Jones, Chief of Staff
 Elizabeth Megawood, Chief Counsel

December 19, 2002

David Heymsfield, Counsel

The Honorable Donald L. Evans
 Secretary
 U.S. Department of Commerce
 14th Street & Constitution Ave., NW
 Washington, DC 20230

Dear Mr. Secretary:

I am writing to you about U.S. Department of Commerce procedures regarding an appeal of a CZMA consistency determination by the State of New York concerning Millennium Pipeline. Millennium is an interstate gas pipeline project that the Federal Energy Regulatory Commission (FERC) determined is required by public convenience and necessity, and authorized with Millennium's right of eminent domain, if necessary. The project was comprehensively considered for four years by FERC, which issued a Certificate, as well as a Final Environmental Impact Statement (EIS) as required under the National Environmental Policy Act (NEPA). As part of its exhaustive review of all aspects of this project, FERC compiled an all-encompassing record of economic need, pipeline safety measures, and environmental mitigation data. Yet I understand that the Department of State of New York and opponents of the pipeline are questioning again the pipeline's ability to operate safely as part of a CZMA consistency objection.

FERC, the lead Federal agency for pipeline approval, granted its certificate after comprehensively balancing the national benefits of the Project and its environmental impacts, including its effects on the coastal zone. I do not believe that the CZMA was ever intended to take precedence over FERC authority in this area. Moreover, Millennium is required to meet all pipeline safety statutes and regulations required by the Office of Pipeline Safety of the Department of Transportation. FERC exhaustively evaluated Millennium's coastal zone impacts in full consultation with all relevant federal and state agencies as the lead Federal agency under NEPA.

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The existing record compiled at FERC over four years, including technical, economic, safety, and environmental studies, as well as numerous public hearings, is sufficient for you to find that the project is consistent with the enforceable policies of the CZMA, and is necessary in the interest of national security. A final decision on this project should be made without further delay.

Thank you in advance for your attention to this important matter. Your consideration is appreciated.

Sincerely,


DON YOUNG
Chairman



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

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The Honorable Don Young
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter regarding the Millennium Pipeline Company's administrative appeal filed under the Coastal Zone Management Act (CZMA) and currently pending before the Department of Commerce. The National Oceanic and Atmospheric Administration (NOAA) processes many aspects of CZMA appeals for the Secretary of Commerce, and therefore was asked to respond to your letter.

The State of New York's CZMA objection to Millennium's project, as currently proposed, centered primarily on the pipeline's potential adverse effects to the State's coastal resources. As indicated in your letter, the Federal Energy Regulatory Commission is the lead Federal agency for pipeline approval. In that capacity, on September 19, 2002, FERC issued a certificate to Millennium to construct and operate its pipeline.

Under the CZMA, an applicant for a federal license or permit required to conduct an activity affecting any land or water use or natural resource of a state's coastal zone must provide the affected state with a certification. The certification indicates that the proposed activity – in this case, Millennium's pipeline project – complies with the enforceable policies of the state's federally-approved coastal management program. Under the CZMA, the state reviews the certification and may object to the applicant's project. In this event, the CZMA provides that the concerned federal agency is precluded from issuing the license or permit unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security." (Ground II). Section 307(c)(3)(A).

FERC explicitly recognizes the CZMA's requirements. As stated in its September 2002 order, the "Commission's issuance of a certificate to Millennium is subject to a number of conditions. For instance, . . . Millennium must comply with various statutes, including . . . the Coastal Zone Management Act." FERC's order also states ". . . until Millennium obtains the necessary approvals under the CZMA, it cannot exercise the authorization granted in this order to construct and operate its project."

In seeking to expedite the CZMA appeal process, we are working to complete the administrative record on which the Secretary's decision is based. The public comment period recently closed and we expect to announce shortly a schedule for the parties to submit a second round of briefs addressing issues raised in the appeal.



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Although we cannot comment on the merits of an ongoing appeal, please be assured that we carefully review all information contained in the administrative record, including comments submitted by interested federal agencies, such as the Federal Energy Regulatory Commission.

Thank you again for your thoughts on this important issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "James R. Walpole for".

James R. Walpole
General Counsel